

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHIRLEY A. ETZEL,

Plaintiff,

v.

Case No. 13-11295
Honorable Denise Page Hood

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
AND DISMISSING ACTION**

This matter is before the Court on Magistrate Judge Mona K. Majzoub's Report and Recommendation [**Doc. No. 17, filed January 27, 2014**]. Plaintiff Shirley A. Etzel filed Objections to the Report and Recommendation on February 10, 2014.

Judicial review of the Commissioner's decision is limited in scope to determining whether the Commissioner employed the proper legal criteria in reaching his conclusion. *Garner v. Heckler*, 745 F.2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge ("ALJ") must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F.2d 922, 928 (6th Cir. 1987). A district court's review of an ALJ's decision is not a *de novo* review. The district court may not resolve conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F.2d at 397. The decision of the Commissioner must be upheld if supported by substantial evidence, even if the record might support a contrary decision or if the district court arrives at a different conclusion. *Smith v. Secretary of HHS*, 893 F.2d 106, 108 (6th Cir. 1984); *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986).

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons. The Court agrees with the Magistrate Judge's determination that the ALJ's finding that Plaintiff's medically determinable impairments did not prohibit Plaintiff from walking, standing or lifting. The Magistrate Judge reviewed the ALJ's findings and the record thoroughly in reaching her conclusion. The Court also agrees with the Magistrate Judge that while Plaintiff's new evidence which she seeks to present on remand suggests that Plaintiff suffers from kidney disease and diabetes and that she has lumbar stenosis at LF-5 as well as disc disease at L304, Plaintiff has not shown that there is a reasonable probability that Defendant would have reached a different disposition of the disability claim if presented with the new evidence. The Court further agrees that Plaintiff has not shown that these impairments would cause any additional functional limitations, in light of Plaintiff's argument that the new evidence is consistent with the evidence that was available to the ALJ. Plaintiff's objections that the Magistrate Judge's legal conclusions were erroneous as to whether the new evidence is material and there was no jurisdiction to remand on collateral grounds for failure to exhaust administrative remedies are overruled.

For the reasons set forth above,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge Mona K. Majzoub [Doc. No. 17, filed January 27, 2014] is **ACCEPTED** and **ADOPTED** as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Motion to Remand to Commissioner for Further Consideration [Doc. No. 14, filed September 23, 2013] is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [Doc. No. 16, filed November 13, 2013] is **GRANTED**.

IT IS FURTHER ORDERED that the Commissioner's decision is AFFIRMED.

IT IS FURTHER ORDERED this action is DISMISSED with prejudice.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: February 28, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 28, 2014, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager